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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/811,718

03/19/2001

Jay Paul Drummond

D-1120 R2

2928

28995

7590

09/18/2009

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EXAMINER

FELTEN, DANIEL S

ART UNIT

PAPER NUMBER

3696

MAIL DATE

DELIVERY MODE

09/18/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte:* JAY PAUL DRUMMOND, BOB CICHON, MARK SMITH,  
DALE BLACKSON, DAVID WEIS, JAMES R. CHURCH,  
and MIKAL R. GILGER

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Application No. 09/811,718  
Technology Center 3600

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Mailed: September 18, 2009

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Before Deborah L. Perry, Supervisory Paralegal Specialist, Review Team.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on August 31, 2009. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter(s) requiring attention prior to docketing.

EXAMINER'S ANSWER

The following inconsistency exists between the last Office action, the Non-Final Rejection, mailed January 13, 2003, and the Examiner's Answer, mailed May 29, 2009, specifically the Grounds of Rejection Sections.

The grounds of rejection of the claims as provided in the Examiner's Answer must be consistent with the last Office action of record, including any Advisory action responsive to any after final submissions. Each grounds of rejection to be reviewed on appeal must be included and any "Withdrawn" rejections should be identified. *See also Manual of Patent Examining Procedure* (MPEP) § 1207.02 (8<sup>th</sup> ed. Rev. 6, Sept 2007) for details.

The last Office Action, the Non-Final Rejection, mailed January 13, 2003, contains a rejection for claims 44-102 under 35 U.S.C. §112, second paragraph. In the Examiner's Answer, mailed May 29, 2009, this ground of rejection is absent, as it has not been restated, nor was it indicated that it has been withdrawn.

Clarification of the all grounds of rejection is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the Examiner to:

1) VACATE the Examiner's Answer and issue either

a) a Substitute Examiner's Answer to correct the deficiencies in the Grounds of Rejection To Be Reviewed On Appeal, and the supporting Arguments section; or

b) alternatively, if appropriate, issue a Supplemental Examiner's Answer to correct the deficiencies in the Grounds of Rejection To Be Reviewed On Appeal, including any new ground of rejection and supporting Arguments.

All Supplemental Examiner's Answer's require approval from the TC Director or designee in accordance with MPEP 1207.05; and

2) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DLP/bar

Application No. 09/811,718

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